

1 Jeffrey Whittington, Esq. (SBN 236028)
 2 Joshua Shayne, Esq. (SBN 223408)
 3 KAUFMAN BORGEESE & RYAN LLP
 23975 Park Sorrento, Suite 370
 4 Calabasas, CA 91302
 Telephone: (818) 880-0992
 Facsimile: (818) 880-0993

5 Attorneys for Defendants,
 6 SOCIETY OF CHILDREN'S BOOK
 WRITER ILLUSTRATORS; LIN OLIVER

FILED
 Superior Court of California
 County of Los Angeles
05/28/2019

Sherri R. Carter, Executive Officer / Clerk of Court

By: Rosalva R. Reza Deputy

7
 8
 9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 10 **FOR THE COUNTY OF LOS ANGELES**

11
 12 JAY ASHER, an individual;

13 Plaintiff,

14 vs.

15 SCBWI – SOCIETY OF CHILDREN'S
 16 BOOK WRITERS AND ILLUSTRATORS,
 A Non-Profit Corporation [a California
 17 Corporation], LIN OLIVER, in her official
 18 and individual capacities and DOES 1
 through 50, inclusive,

19 Defendants.
 20

Case No. 19STCV01907

(Assigned for all purposes to the Hon. David Sotelo,
 Dept. 40)

**~~PROPOSED~~ JUDGMENT RE:
 DEFENDANTS SOCIETY OF
 CHILDREN'S BOOK WRITERS AND
 ILLUSTRATORS AND LIN OLIVER'S
 SPECIAL MOTION TO STRIKE
 PURSUANT TO C.C.P. §425.16**

Complaint Filed: January 18, 2019

21 The Special Motion to Strike pursuant to CCP § 425.16 ("Motion") of Defendants,
 22 SOCIETY OF CHILDREN'S BOOK WRITERS AND ILLUSTRATORS ("SCBWI"), and
 23 LIN OLIVER came on regularly for hearing before this Court on April 26, 2019, the
 24 Honorable David Sotelo presiding.

25 The Court considered the parties' motion, opposition, and reply briefing as well as
 26 declarations, exhibits, and objections filed by the parties in connection with Defendants'
 27 Motion, and oral argument of counsel. The Court hereby grants Defendants' Motion, with
 28

**~~PROPOSED~~ JUDGMENT RE DEFENDANTS' SPECIAL MOTION
 TO STRIKE PURSUANT TO CCP § 425.16**

1 Plaintiff's Complaint and all causes of action therein being stricken. The Court further finds
2 that Defendants SCBWI and LIN OLIVER are entitled to Judgment as against Plaintiff JAY
3 ASHER. The Court adopts its tentative ruling as its final ruling. A copy of the Court's
4 Minute Order striking Plaintiff's Complaint is attached hereto as **Exhibit "A."**

5 **IT IS THEREFORE ORDERED** that Defendants' Special Motion to Strike,
6 pursuant to CCP § 425.16, is granted, Plaintiff's Complaint and all causes of action therein
7 are hereby stricken, and Judgment shall be entered in favor of Defendants and against
8 Plaintiff. Defendants are to recover their costs and attorney's fees.

9 The Clerk is ordered to enter Judgment accordi

10 05/28/2019

11 DATED: May _____, 2019



A handwritten signature in black ink, appearing to read "David Sotelo".

David Sotelo / Judge

Judge of the Superior Court

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 40

19STCV01907

**JAY ASHER vs SCBWI - SOCIETY OF CHILDRENS BOOK
WRITERS AND ILLUSTRATORS, A NON-PROFIT
CORPORATION [A CALIFORNIA CORPORATION], et al.**

April 26, 2019

8:30 AM

Judge: Honorable David Sotelo
Judicial Assistant: R. Reza
Courtroom Assistant: M. Navarro

CSR: W. Wilcox, #9187
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Patrick Leroy Fisher

For Defendant(s): No Appearances

Other Appearance Notes: Jeff Whittington appears on behalf of the defendants.

NATURE OF PROCEEDINGS: Case Management Conference; Hearing on Special Motion to Strike under CCP Section 425.16 (Anti-SLAPP motion)

Pursuant to Government Code sections 68086, 70044, California Rules of Court, rule 2.956, and the stipulation of appearing parties, W. Wilcox, #9187, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The Court provides a tentative ruling to all sides.

Matter is called for hearing, argued and submitted.

The Court takes the matter under submission

LATER:

The Court rules as follows:

The Special Motion to Strike under CCP Section 425.16 (Anti-SLAPP motion) filed by SCBWI - Society of Childrens Book Writers and Illustrators, a Non-Profit Corporation [a California Corporation], Lin Oliver on 04/02/2019 is Granted.

Plaintiff Jay Asher sues defendants the Society of Children's Book Writers and Illustrators ("SCBWI") and its Executive Director, Lin Oliver ("Oliver"), collectively ("Defendants"), for defamation per se, defamation per quod, and intentional infliction of emotional distress. Plaintiff is a published author who had been a long-time member of SCBWI.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 40

19STCV01907

**JAY ASHER vs SCBWI - SOCIETY OF CHILDRENS BOOK
WRITERS AND ILLUSTRATORS, A NON-PROFIT
CORPORATION [A CALIFORNIA CORPORATION], et al.**

April 26, 2019

8:30 AM

Judge: Honorable David Sotelo
Judicial Assistant: R. Reza
Courtroom Assistant: M. Navarro

CSR: W. Wilcox, #9187
ERM: None
Deputy Sheriff: None

On April 21, 2017, Executive Director Oliver received an anonymous joint-email, edited and sent by seven female ("Seven Complaining Women") members of SCBWI. The e-mail accused plaintiff of using the SCBWI platform and its conferences, to lure female members into sexual relationships. The email explained that plaintiff had a history of using threats and intimidation against these women; that because of plaintiff's stature in the industry, these women fear for their safety and/or retaliation from plaintiff if they confront him. These Seven Complaining Women—and at least five additional women referenced by them but who elected not to participate in the joint-email—have experienced serious emotional distress, trauma and depression. In their email, they suggest their membership in SCBWI may not be renewed because plaintiff's continuous presence at SCBWI events is intimidating. Finally, the Seven Complaining Women are concerned that unless SCBWI addresses the "problem" of plaintiff, other women could fall also victim to him. The women plead for SCBWI leadership to do something about Jay Asher.

Following continued investigations, discussions indirectly and directly with plaintiff, speaking with identified members of the Seven Complaining Women, staff and others, and after publication in industry-related magazines of articles revealing many of the accusations and critical of SCBWI for not acting, on February 12, 2018, Olive, in a public statement, banned Plaintiff from SCBWI events for violating SCBWI's code of conduct. Two days later on the 14th, SCBWI issued a second statement that it was regretful for any harassment that had occurred.

On April 12, 2019, defendants file this Anti-SLAPP motion to strike.

Anti-SLAPP Generally:

In determining whether to grant or deny a Code of Civil Procedure section 425.16 special motion to strike, the court must engage in a two-step process. *Shekhter v. Financial Indemnity Co.* (2001) 89 Cal.App.4th 141, 150. First, the court must decide whether the moving party has met the threshold burden of showing that the plaintiff's cause of action arises from the moving party's constitutional rights of free speech or petition for redress of grievances. *Id.* This burden may be met by showing the act which forms the basis for the plaintiff's cause of action was an act that falls within one of the four categories of conduct set forth in section 425.16, subdivision (e):

(1) Any written or oral statement or writing made before a legislative, executive, or judicial

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 40

19STCV01907

April 26, 2019

**JAY ASHER vs SCBWI - SOCIETY OF CHILDRENS BOOK
WRITERS AND ILLUSTRATORS, A NON-PROFIT
CORPORATION [A CALIFORNIA CORPORATION], et al.**

8:30 AM

Judge: Honorable David Sotelo
Judicial Assistant: R. Reza
Courtroom Assistant: M. Navarro

CSR: W. Wilcox, #9187
ERM: None
Deputy Sheriff: None

proceeding, or any other official proceeding authorized by law (CCP § 425.16(e)(1));

(2) Any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law (CCP § 425.16(e)(2));

(3) Any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest (CCP § 425.16(e)(3)); or

(4) Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest (CCP § 425.16(e)(4)).

If the defendant meets this initial burden, then the burden shifts to the plaintiff to establish a probability that the plaintiff will prevail on the claim by presenting facts which would, if proved at trial, support a judgment in the plaintiff's favor. *Id.* at 150-151. In making its determination on this prong, the trial court is required to consider the pleadings and the supporting and opposing affidavits stating the facts upon which the liability or defense is based. *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 646. The court does not, however, "weigh credibility [nor] compare the weight of the evidence. Rather, [the court] accepts as true the evidence favorable to the plaintiff and evaluates the defendant's evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law." *Flatley v. Mauro* (2006) 39 Cal.4th 299, 326.

No leave to amend is warranted when an anti-SLAPP motion is granted. "Allowing a SLAPP plaintiff leave to amend the complaint . . . would completely undermine the statute by providing the pleader a ready escape from section 425.16's quick dismissal remedy. Instead of having to show a probability of success on the merits, the SLAPP plaintiff would be able to go back to the drawing board with a second opportunity to disguise the vexatious nature of the suit through more artful pleading. This would trigger a second round of pleadings, a fresh motion to strike, and inevitably another request for leave to amend." *Simmons v. Allstate Ins. Co.* (2001) 92 Cal.App.4th 1068, 1073.

Page Limit: It should be noted that Defendants' 27-page anti-SLAPP motion is well over the 15-page limit. See CRC Rule 3.1113(d). Defendants are advised that the Court is empowered to disregard oversized memoranda and are counseled to keep their future memoranda within the prescribed page limits. CRC Rules 3.1113(g); 3.1300(d).

Evidentiary Objections: Plaintiff's objections to declaration of Lin Oliver:
No. 14 is SUSTAINED

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 40

19STCV01907

April 26, 2019

JAY ASHER vs SCBWI - SOCIETY OF CHILDRENS BOOK

8:30 AM

**WRITERS AND ILLUSTRATORS, A NON-PROFIT
CORPORATION [A CALIFORNIA CORPORATION], et al.**

Judge: Honorable David Sotelo
Judicial Assistant: R. Reza
Courtroom Assistant: M. Navarro

CSR: W. Wilcox, #9187
ERM: None
Deputy Sheriff: None

All others are OVERRULED

Defendants' objections to the declarations:

Odum's Declaration SUSTAINED

Lieu's Declaration OVERRULED

Rennert's Declaration OVERRULED

Plaintiff's Declaration OVERRULED

First Step: Protected Activity: In determining whether a defendant seeking to strike a claim under the anti-SLAPP statute has made a prima facie showing that the plaintiff's action arises from protected activity, the critical consideration is whether the plaintiff's cause of action itself, and the act which the plaintiff complains of, is based on an act taken by defendant in furtherance of a right of petition or free speech. *Philipson & Simon v. Gulsvig* (2007) 154 Cal.App.4th 347, 357; *Birkner v. Lam* (2007) 156 Cal.App.4th 275, 281; *Paul for Council v. Hanyecz* (2001) 85 Cal.App.4th 1356, 1364. "The anti-SLAPP statute's definitional focus is not on the form of the plaintiff's cause of action but, rather, the defendant's activity that gives rise to his or her asserted liability – and whether that activity constitutes protected speech or petitioning." *Navellier v. Sletten* (2002) 29 Cal.4th 82, 92 (emphasis in original). In other words, "the speech or petitioning activity itself is the wrong complained of, and not just evidence of liability or a step leading to some different act for which liability is asserted." *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1060 (emphasis in original.) "At the first step, the moving defendant bears the burden of identifying all allegations of protected activity, and the claims for relief supported by them. When relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded at this stage. If the court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached." *Baral v. Schnitt* (2016) 1 Cal.5th 376, 396. Protected Activity Analysis: Defendants assert that statements they made to the Associated Press and Publishers Weekly were protected by CCP § 425.16(e)(3), this is so, they aver, because they were statements made in a public forum about an issue of public interest. The statements are the following:

To the Associated Press on February 12, 2018:

Both Jay Asher and David Diaz were found to have violated the SCBWI code of conduct in regard to harassment," Oliver wrote in an email. "Claims against them were investigated

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 40

19STCV01907

**JAY ASHER vs SCBWI - SOCIETY OF CHILDRENS BOOK
WRITERS AND ILLUSTRATORS, A NON-PROFIT
CORPORATION [A CALIFORNIA CORPORATION], et al.**

April 26, 2019

8:30 AM

Judge: Honorable David Sotelo
Judicial Assistant: R. Reza
Courtroom Assistant: M. Navarro

CSR: W. Wilcox, #9187

ERM: None

Deputy Sheriff: None

and, as a result, they are no longer members and neither will
be appearing at any SCBWI events in the future. (Anti-SLAPP, 7:22-24.)

To Publishers Weekly on February 14, 2018:

It is of paramount importance to SCBWI that we maintain a
welcoming and safe environment for all members of our community
We would like to take this opportunity to express deep regret that
any harassment occurred within the SCBWI community. We
hope that our newly crafted and detailed anti-harassment policies
and procedures will ensure that SCBWI is a safe space for everyone.
We care about our members, and put their emotional and physical
safety and comfort as our highest priority. (Anti-SLAPP, 8:6-12.)

Defendants contend that these statements were made in a public forum because they were made
to two news outlets and, again, that the statements concerned an issue of public interest.

In opposition, Plaintiff argues that Defendants' statements were not made about an issue of
public interest because the statements were only relevant to the small audience of members or
potential members of SCBWI.

Generally, news media are considered public forums if is used for discussion of public issues and
distributed to a large and interested community. Annette F. v. Sharon S. (2004) 119 CA4th 1146,
1161. Associated Press and Publishers Weekly are public forums.

Plaintiff's contention that the statements were only relevant to members or potential members of
SCBWI. However, a statement is connected to an issue of public interest if the statement
concerns a topic of widespread public interest and contributes in some manner to a public
discussion of the topic. Wilbanks v. Wolk (2004) 121 Cal.App.4th 883, 898.

Sexual abuse allegations against Hollywood mogul Harvey Weinstein surfaced in 2017, igniting
the #MeToo movement in the United States. By 2018, the conversation about sexual harassment
became international. Washington Post, A Year After It Began, Has #MeToo Become a Global
Movement? World Section, by Karla Adam & William Booth, October 5, 2018.

In February 2018, plaintiff was being accused, via anonymous online comments to an online

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 40

19STCV01907

April 26, 2019

**JAY ASHER vs SCBWI - SOCIETY OF CHILDRENS BOOK
WRITERS AND ILLUSTRATORS, A NON-PROFIT
CORPORATION [A CALIFORNIA CORPORATION], et al.**

8:30 AM

Judge: Honorable David Sotelo
Judicial Assistant: R. Reza
Courtroom Assistant: M. Navarro

CSR: W. Wilcox, #9187
ERM: None
Deputy Sheriff: None

article, of harassing members of SCBWI. Defendants' statements were made directly in response to membership concerns, and address an issue of great public interest.

Defendants have established that its action arises directly from a protected activity.

Second Step: Probability of Prevailing: The burden is on the plaintiff, the pleader, to produce evidence that would be admissible at trial, or to proffer a prima facie showing of facts supporting a judgment in the pleader's favor. *Chavez v. Mendoza* (2001) 94 Cal.App.4th 1083, 1087. In essence, this is a "summary judgment-like" procedure where the opposing party must make a prima facie case for its cause of action challenged. *Bergman v. Drum* (2005) 129 Cal.App.4th 11, 18. Plaintiff cannot simply rely on the allegations in the complaint, but must provide the court with sufficient evidence to permit the court to determine whether "there is a probability that the plaintiff will prevail on the claim." *ComputerXpress v. Jackson* (2001) 93 Cal. App. 4th 993, 1010, citing *Paul for Council v. Hanyecz* (2001) 85 Cal. App. 4th 1356, 1364, fn. 5 & *DuPont Merck Pharmaceutical Co. v. Superior Court* (2000) 78 Cal. App. 4th 562, 568.

In other words, Asher must demonstrate he will "probably" prevail in his lawsuit and is therefore required to show a likelihood that he could produce clear and convincing evidence of malice on the part of Lin Oliver and SCBWI. *Beilson v. Superior Court* (1996) 44 Cal.App.4th 944, 953. The clear and convincing standard requires that evidence be such as to command the unhesitating assent of every reasonable mind. *In re David C.* (1984) 152 Cal. App. 3d 1189, 1208.

This Court is required to "accept as true all evidence favorable to the plaintiff and assess the defendant's evidence only to determine if it defeats the plaintiff's submission as a matter of law." [Citation]. That is the setting in which we determine whether plaintiff has met the required showing, a showing that is 'not high.' [Citation]. In the words of the Supreme Court, plaintiff needs to show only a 'minimum level of legal sufficiency and triability.' [Citation]. In the words of other courts, plaintiff needs to show only a case of 'minimal merit.' [Citation]." *Hecimovich v. Encinal School Parent Teacher Organization* (2012) 203 Cal.App.4th 450, 468-469.

Defamation Standard: The elements of a claim for defamation (whether libel or slander) are: (1) Intentional publication by defendant of statement of fact; (2) that is false; (3) defamatory; (4) unprivileged; and (5) has a natural tendency to injure or that causes special damages. *Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1369; see *Taus v. Loftus* (2007) 40 Cal.4th 683, 720.

Probability of Prevailing Analysis: Falsity of the Statements: Plaintiff contends that the

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 40

19STCV01907

April 26, 2019

**JAY ASHER vs SCBWI - SOCIETY OF CHILDRENS BOOK
WRITERS AND ILLUSTRATORS, A NON-PROFIT
CORPORATION [A CALIFORNIA CORPORATION], et al.**

8:30 AM

Judge: Honorable David Sotelo
Judicial Assistant: R. Reza
Courtroom Assistant: M. Navarro

CSR: W. Wilcox, #9187
ERM: None
Deputy Sheriff: None

statements were false because there was no investigation into the harassment allegations, he was not banned, he was not the reason the harassment policy was changed, and he has never harassed anyone. Plaintiff states that Defendants did not attempt to corroborate the anonymous email they received in April 2017. The anonymous email, was from Seven Complaining Women, who stated that they had sexual relations with plaintiff and that he was threatening or intimidating them into keeping quiet about it. Plaintiff alleges that one of the women Sandi Van Lieu ("Lieu") revealed her identity to defendants in June 2017. Plaintiff states that Lieu sent an email which stated that the accusations were false. (Compl. ¶ 13.) Plaintiff alleges that defendants never contacted Lieu to inquire about her claims. Plaintiff states that he was not banned from the organization and instead he and defendants agreed that he would just stop attending SCBWI events. Plaintiff also denies ever harassing anyone.

In their motion, defendants contend that Olive's statement to the Associated Press was true. Defendants allege that they conducted an investigation and found that Plaintiff violated their code of conduct which stated: "[w]e do not tolerate harassment of conference participants in any form. Harassment includes...deliberate intimidation, stalking, following...and unwelcome sexual attention." (Anti-SLAPP, 22:7-10.) Defendants state that plaintiff Asher admits in the Complaint that an investigation was conducted. The section they refer to reads as follows: "Plaintiff is informed and believes and thereon alleges that no further investigation [aside from the conversation between Oliver and Plaintiff] into the April 2017 accusations against plaintiff was conducted." (Compl. ¶ 11). Defendants allege that they did corroborate the accusations against Plaintiff. Oliver states that she spoke to plaintiff and that he admitted to having extramarital affairs with group members. Defendants state that the accusations were further corroborated when they received an email from Robin Mellom ("Mellom") who revealed that she was one of the women who wrote the anonymous email. In December 2017, Mellom wrote that plaintiff was harassing her by calling her crazy and threatening to sue her.

Statement to the Associated Press: The Court finds that plaintiff cannot demonstrate that Oliver's statement to the Associated Press was false. There is no evidence to indicate that defendants did not conduct an investigation. It is undisputed that defendants received an email alleging that Plaintiff had intimidated or threatened SCBWI members to keep them from discussing their past sexual relations. Intimidation or threats would have been a violation of SCBWI's then existing code of conduct. Defendants attempted to corroborate this email by contacting plaintiff, who admitted to Oliver that he engaged in extramarital affairs with SCBWI members. Plaintiff's arguments, about the lack of follow-up inquiries with purported accusers, are about the sufficiency or the thoroughness of the investigation. However, Plaintiff has not demonstrated that

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 40

19STCV01907

**JAY ASHER vs SCBWI - SOCIETY OF CHILDRENS BOOK
WRITERS AND ILLUSTRATORS, A NON-PROFIT
CORPORATION [A CALIFORNIA CORPORATION], et al.**

April 26, 2019

8:30 AM

Judge: Honorable David Sotelo
Judicial Assistant: R. Reza
Courtroom Assistant: M. Navarro

CSR: W. Wilcox, #9187
ERM: None
Deputy Sheriff: None

there was no investigation at all.

Additionally, plaintiff has not demonstrated that he never harassed anyone. Moreover, he does not dispute the public interest surrounding sexual harassment in any its many permutations. Instead, he admits to consensual relationships and denies that he sexually harassed any person. And even if the Court accepted the results of the polygraph test—which it does not—that would only indicate that plaintiff believed none of his actions constituted harassment. Rennert's and Lieu's declarations are irrelevant (that they have never witnessed plaintiff harass anyone, does not prove that Plaintiff never harassed someone outside of their presence).

Statement to Publishers Weekly: The Court also finds that plaintiff cannot demonstrate that SCBWI's statement to Publishers Weekly was false. Essentially Defendants' statement said two things (1) that they were regretful for any incidents of harassment that had occurred and (2) that they were implementing a new harassment policy. Plaintiff interprets this statement as saying that the policy was changed because of the allegations against him. It is true that before quoting SCBWI's statement, the Publishers Weekly article states that "following news surrounding the removal of Jay Asher...from the Society of Children's Book Writers and Illustrators on charges of sexual harassment, the SCBWI has announced a revised anti-harassment policy." (Oppo., 10:1-3.) However, the earlier statement to the Associated Press stated that Plaintiff and another individual had violated SCBWI's code of conduct and as a result had been banned. Even if plaintiff could show that he had never harassed anyone, he has not demonstrated that SCBWI did not change its policy because of the other accused individual.

Actual Malice-Public Figure: Because plaintiff is undisputedly a public figure, they must show that defendants acted with actual malice. Actual malice is defined as acting "with knowledge that [the publication] was false or with reckless disregard of whether it was false or not." *New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 280. Moreover, actual malice cannot be implied and must be proven by direct evidence. *Time, Inc. v. Hill* (1967) U.S. 374; *Sanborn v. Chronicle Pub. Co.* (1976) 18 Cal. 3d 406, 413.

Plaintiff alleges that defendants acted with actual malice because they knew the allegations were false. Plaintiff states that when they spoke to Oliver on April 19, 2017, she indicated to Asher that she did not believe the women and that the accusations were just "sour grapes." (Decl. Asher ¶ 11.) Plaintiff reiterates that defendants never reached out to Lieu who denied being harassed by Plaintiff. Plaintiff also alleges that if defendants had reached out to Lieu they would have found out that Mellom manipulated Lieu into writing a draft of the anonymous email because she was

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 40

19STCV01907

**JAY ASHER vs SCBWI - SOCIETY OF CHILDRENS BOOK
WRITERS AND ILLUSTRATORS, A NON-PROFIT
CORPORATION [A CALIFORNIA CORPORATION], et al.**

April 26, 2019

8:30 AM

Judge: Honorable David Sotelo
Judicial Assistant: R. Reza
Courtroom Assistant: M. Navarro

CSR: W. Wilcox, #9187
ERM: None
Deputy Sheriff: None

jealous of plaintiff's success. (Decl. Lieu ¶ 9.)

The Court finds that plaintiff has failed to show that defendants' statements were made with actual malice. Even if we assume that Oliver told plaintiff she initially did not believe the anonymous Seven Complaining Women email in April of 2017, that does not indicate that defendants knew that accusations were false a year later during February 2018. It is also undisputed that during that later time, more and more people, including additional anonymous online users, accused plaintiff of sexually related harassment. It is also undisputed that two of the authors of the email revealed their identity. While one of the seven women recanted, the rest did not. Consequently, although defendants could have had reservations about the allegations, plaintiff cannot demonstrate that defendants knew the allegations were false or were reckless as to their veracity.

Intentional Infliction of Emotional Distress: In order to state a cause of action for intentional infliction of emotional distress a plaintiff must show: (1) outrageous conduct by the defendant; (2) the defendant's intention of causing or reckless disregard of the probability of causing emotional distress; (3) the plaintiff's suffering severe or extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. *Trerice v. Blue Cross of California* (1989) 209 Cal. App. 3d 878, 883.

As discussed earlier, plaintiff cannot demonstrate that they will succeed in their defamation causes of action. The law recognizes that an independent cause of action cannot be maintained for intentional infliction of emotional distress based on the very same acts which are insufficient to support a cause of action for defamation. *Flynn v. Higham*, 149 Cal.App.3d 677, 682. In *Flynn*, the court stated that to allow such a claim "...would also render meaningless any defense of truth or privilege." *Id.* at 682. Since plaintiff cannot demonstrate that the statements were false or that defendants had serious doubts about their truth, he cannot meet the outrageous conduct prong of intentional infliction of emotional distress.

Plaintiff has not presented sufficient evidence to establish a probability of prevailing in any of his causes of action in trial.

In the end, this Court finds that plaintiffs filed this law suit against defendants after defendants exercised the Constitutional right to speech. As such, the gravamen of plaintiff's case and of plaintiff's causes of action, is the attempt to take away defendant's constitutionally protected rights or to punish the defendants for exercising those rights, and plaintiff has not met his burden

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 40

19STCV01907

April 26, 2019

**JAY ASHER vs SCBWI - SOCIETY OF CHILDRENS BOOK
WRITERS AND ILLUSTRATORS, A NON-PROFIT
CORPORATION [A CALIFORNIA CORPORATION], et al.**

8:30 AM

Judge: Honorable David Sotelo
Judicial Assistant: R. Reza
Courtroom Assistant: M. Navarro

CSR: W. Wilcox, #9187
ERM: None
Deputy Sheriff: None

in presenting sufficient evidence to establish a probability of prevailing at trial.

Conclusion: The Court GRANTS the anti-SLAPP motion, plaintiff's causes of action are stricken, and defendants are to give notice.

Plaintiff Jay Asher sues defendants the Society of Children's Book Writers and Illustrators ("SCBWI") and its Executive Director, Lin Oliver ("Oliver"), collectively ("Defendants"), for defamation per se, defamation per quod, and intentional infliction of emotional distress. Plaintiff is a published author who had been a long-time member of SCBWI.

On April 21, 2017, Executive Director Oliver received an anonymous joint-email, edited and sent by seven female ("Seven Complaining Women") members of SCBWI. The e-mail accused plaintiff of using the SCBWI platform and its conferences, to lure female members into sexual relationships. The email explained that plaintiff had a history of using threats and intimidation against these women; that because of plaintiff's stature in the industry, these women fear for their safety and/or retaliation from plaintiff if they confront him. These Seven Complaining Women—and at least five additional women referenced by them but who elected not to participate in the joint-email—have experienced serious emotional distress, trauma and depression. In their email, they suggest their membership in SCBWI may not be renewed because plaintiff's continuous presence at SCBWI events is intimidating. Finally, the Seven Complaining Women are concerned that unless SCBWI addresses the "problem" of plaintiff, other women could fall also victim to him. The women plead for SCBWI leadership to do something about Jay Asher.

Following continued investigations, discussions indirectly and directly with plaintiff, speaking with identified members of the Seven Complaining Women, staff and others, and after publication in industry-related magazines of articles revealing many of the accusations and critical of SCBWI for not acting, on February 12, 2018, Olive, in a public statement, banned Plaintiff from SCBWI events for violating SCBWI's code of conduct. Two days later on the 14th, SCBWI issued a second statement that it was regretful for any harassment that had occurred.

On April 12, 2019, defendants file this Anti-SLAPP motion to strike.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 40

19STCV01907

**JAY ASHER vs SCBWI - SOCIETY OF CHILDRENS BOOK
WRITERS AND ILLUSTRATORS, A NON-PROFIT
CORPORATION [A CALIFORNIA CORPORATION], et al.**

April 26, 2019

8:30 AM

Judge: Honorable David Sotelo
Judicial Assistant: R. Reza
Courtroom Assistant: M. Navarro

CSR: W. Wilcox, #9187
ERM: None
Deputy Sheriff: None

Anti-SLAPP Generally:

In determining whether to grant or deny a Code of Civil Procedure section 425.16 special motion to strike, the court must engage in a two-step process. *Shekhter v. Financial Indemnity Co.* (2001) 89 Cal.App.4th 141, 150. First, the court must decide whether the moving party has met the threshold burden of showing that the plaintiff's cause of action arises from the moving party's constitutional rights of free speech or petition for redress of grievances. *Id.* This burden may be met by showing the act which forms the basis for the plaintiff's cause of action was an act that falls within one of the four categories of conduct set forth in section 425.16, subdivision (e):

- (1) Any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law (CCP § 425.16(e)(1));
- (2) Any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law (CCP § 425.16(e)(2));
- (3) Any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest (CCP § 425.16(e)(3)); or
- (4) Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest (CCP § 425.16(e)(4)).

If the defendant meets this initial burden, then the burden shifts to the plaintiff to establish a probability that the plaintiff will prevail on the claim by presenting facts which would, if proved at trial, support a judgment in the plaintiff's favor. *Id.* at 150-151. In making its determination on this prong, the trial court is required to consider the pleadings and the supporting and opposing affidavits stating the facts upon which the liability or defense is based. *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 646. The court does not, however, "weigh credibility [nor] compare the weight of the evidence. Rather, [the court] accepts as true the evidence favorable to the plaintiff and evaluates the defendant's evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law." *Flatley v. Mauro* (2006) 39 Cal.4th 299, 326.

No leave to amend is warranted when an anti-SLAPP motion is granted. "Allowing a SLAPP plaintiff leave to amend the complaint . . . would completely undermine the statute by providing the pleader a ready escape from section 425.16's quick dismissal remedy. Instead of having to show a probability of success on the merits, the SLAPP plaintiff would be able to go back to the

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 40

19STCV01907

April 26, 2019

**JAY ASHER vs SCBWI - SOCIETY OF CHILDRENS BOOK
WRITERS AND ILLUSTRATORS, A NON-PROFIT
CORPORATION [A CALIFORNIA CORPORATION], et al.**

8:30 AM

Judge: Honorable David Sotelo
Judicial Assistant: R. Reza
Courtroom Assistant: M. Navarro

CSR: W. Wilcox, #9187
ERM: None
Deputy Sheriff: None

drawing board with a second opportunity to disguise the vexatious nature of the suit through more artful pleading. This would trigger a second round of pleadings, a fresh motion to strike, and inevitably another request for leave to amend.” *Simmons v. Allstate Ins. Co.* (2001) 92 Cal.App.4th 1068, 1073.

Page Limit: It should be noted that Defendants’ 27-page anti-SLAPP motion is well over the 15-page limit. See CRC Rule 3.1113(d). Defendants are advised that the Court is empowered to disregard oversized memoranda and are counseled to keep their future memoranda within the prescribed page limits. CRC Rules 3.1113(g); 3.1300(d).

Evidentiary Objections: Plaintiff’s objections to declaration of Lin Oliver:
No. 14 is SUSTAINED
All others are OVERRULED

Defendants’ objections to the declarations:
Odum’s Declaration SUSTAINED
Lieu’s Declaration OVERRULED
Rennert’s Declaration OVERRULED
Plaintiff’s Declaration OVERRULED

First Step: Protected Activity: In determining whether a defendant seeking to strike a claim under the anti-SLAPP statute has made a prima facie showing that the plaintiff’s action arises from protected activity, the critical consideration is whether the plaintiff’s cause of action itself, and the act which the plaintiff complains of, is based on an act taken by defendant in furtherance of a right of petition or free speech. *Philipson & Simon v. Gulsvig* (2007) 154 Cal.App.4th 347, 357; *Birkner v. Lam* (2007) 156 Cal.App.4th 275, 281; *Paul for Council v. Hanyecz* (2001) 85 Cal.App.4th 1356, 1364. “The anti-SLAPP statute’s definitional focus is not on the form of the plaintiff’s cause of action but, rather, the defendant’s activity that gives rise to his or her asserted liability – and whether that activity constitutes protected speech or petitioning.” *Navellier v. Sletten* (2002) 29 Cal.4th 82, 92 (emphasis in original). In other words, “the speech or petitioning activity itself is the wrong complained of, and not just evidence of liability or a step leading to some different act for which liability is asserted.” *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1060 (emphasis in original). “At the first step, the moving defendant bears the burden of identifying all allegations of protected activity, and the claims for relief supported by them. When relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded at

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 40

19STCV01907

April 26, 2019

**JAY ASHER vs SCBWI - SOCIETY OF CHILDRENS BOOK
WRITERS AND ILLUSTRATORS, A NON-PROFIT
CORPORATION [A CALIFORNIA CORPORATION], et al.**

8:30 AM

Judge: Honorable David Sotelo
Judicial Assistant: R. Reza
Courtroom Assistant: M. Navarro

CSR: W. Wilcox, #9187
ERM: None
Deputy Sheriff: None

this stage. If the court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached." Baral v. Schnitt (2016) 1 Cal.5th 376, 396. Protected Activity Analysis: Defendants assert that statements they made to the Associated Press and Publishers Weekly were protected by CCP § 425.16(e)(3), this is so, they aver, because they were statements made in a public forum about an issue of public interest. The statements are the following:

To the Associated Press on February 12, 2018:

Both Jay Asher and David Diaz were found to have violated the SCBWI code of conduct in regard to harassment," Oliver wrote in an email. "Claims against them were investigated and, as a result, they are no longer members and neither will be appearing at any SCBWI events in the future. (Anti-SLAPP, 7:22-24.)

To Publishers Weekly on February 14, 2018:

It is of paramount importance to SCBWI that we maintain a welcoming and safe environment for all members of our community. We would like to take this opportunity to express deep regret that any harassment occurred within the SCBWI community. We hope that our newly crafted and detailed anti-harassment policies and procedures will ensure that SCBWI is a safe space for everyone. We care about our members, and put their emotional and physical safety and comfort as our highest priority. (Anti-SLAPP, 8:6-12.)

Defendants contend that these statements were made in a public forum because they were made to two news outlets and, again, that the statements concerned an issue of public interest.

In opposition, Plaintiff argues that Defendants' statements were not made about an issue of public interest because the statements were only relevant to the small audience of members or potential members of SCBWI.

Generally, news media are considered public forums if is used for discussion of public issues and distributed to a large and interested community. Annette F. v. Sharon S. (2004) 119 CA4th 1146, 1161. Associated Press and Publishers Weekly are public forums.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 40

19STCV01907

**JAY ASHER vs SCBWI - SOCIETY OF CHILDRENS BOOK
WRITERS AND ILLUSTRATORS, A NON-PROFIT
CORPORATION [A CALIFORNIA CORPORATION], et al.**

April 26, 2019

8:30 AM

Judge: Honorable David Sotelo
Judicial Assistant: R. Reza
Courtroom Assistant: M. Navarro

CSR: W. Wilcox, #9187
ERM: None
Deputy Sheriff: None

Plaintiff's contention that the statements were only relevant to members or potential members of SCBWI. However, a statement is connected to an issue of public interest if the statement concerns a topic of widespread public interest and contributes in some manner to a public discussion of the topic. *Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883, 898.

Sexual abuse allegations against Hollywood mogul Harvey Weinstein surfaced in 2017, igniting the #MeToo movement in the United States. By 2018, the conversation about sexual harassment became international. *Washington Post, A Year After It Began, Has #MeToo Become a Global Movement?* World Section, by Karla Adam & William Booth, October 5, 2018.

In February 2018, plaintiff was being accused, via anonymous online comments to an online article, of harassing members of SCBWI. Defendants' statements were made directly in response to membership concerns, and address an issue of great public interest.

Defendants have established that its action arises directly from a protected activity.

Second Step: Probability of Prevailing: The burden is on the plaintiff, the pleader, to produce evidence that would be admissible at trial, or to proffer a prima facie showing of facts supporting a judgment in the pleader's favor. *Chavez v. Mendoza* (2001) 94 Cal.App.4th 1083, 1087. In essence, this is a "summary judgment-like" procedure where the opposing party must make a prima facie case for its cause of action challenged. *Bergman v. Drum* (2005) 129 Cal.App.4th 11, 18. Plaintiff cannot simply rely on the allegations in the complaint, but must provide the court with sufficient evidence to permit the court to determine whether "there is a probability that the plaintiff will prevail on the claim." *ComputerXpress v. Jackson* (2001) 93 Cal. App. 4th 993, 1010, citing *Paul for Council v. Hanyecz* (2001) 85 Cal. App. 4th 1356, 1364, fn. 5 & *DuPont Merck Pharmaceutical Co. v. Superior Court* (2000) 78 Cal. App. 4th 562, 568.

In other words, Asher must demonstrate he will "probably" prevail in his lawsuit and is therefore required to show a likelihood that he could produce clear and convincing evidence of malice on the part of Lin Oliver and SCBWI. *Beilson v. Superior Court* (1996) 44 Cal.App.4th 944, 953. The clear and convincing standard requires that evidence be such as to command the unhesitating assent of every reasonable mind. *In re David C.* (1984) 152 Cal. App. 3d 1189, 1208.

This Court is required to "accept as true all evidence favorable to the plaintiff and assess the defendant's evidence only to determine if it defeats the plaintiff's submission as a matter of law."

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 40

19STCV01907

**JAY ASHER vs SCBWI - SOCIETY OF CHILDRENS BOOK
WRITERS AND ILLUSTRATORS, A NON-PROFIT
CORPORATION [A CALIFORNIA CORPORATION], et al.**

April 26, 2019

8:30 AM

Judge: Honorable David Sotelo
Judicial Assistant: R. Reza
Courtroom Assistant: M. Navarro

CSR: W. Wilcox, #9187
ERM: None
Deputy Sheriff: None

[Citation]. That is the setting in which we determine whether plaintiff has met the required showing, a showing that is 'not high.' [Citation]. In the words of the Supreme Court, plaintiff needs to show only a 'minimum level of legal sufficiency and triability.' [Citation]. In the words of other courts, plaintiff needs to show only a case of 'minimal merit.' [Citation]." Hecimovich v. Encinal School Parent Teacher Organization (2012) 203 Cal.App.4th 450, 468-469.

Defamation Standard: The elements of a claim for defamation (whether libel or slander) are: (1) Intentional publication by defendant of statement of fact; (2) that is false; (3) defamatory; (4) unprivileged; and (5) has a natural tendency to injure or that causes special damages. Wong v. Jing (2010) 189 Cal.App.4th 1354, 1369; see Taus v. Loftus (2007) 40 Cal.4th 683, 720.

Probability of Prevailing Analysis: Falsity of the Statements: Plaintiff contends that the statements were false because there was no investigation into the harassment allegations, he was not banned, he was not the reason the harassment policy was changed, and he has never harassed anyone. Plaintiff states that Defendants did not attempt to corroborate the anonymous email they received in April 2017. The anonymous email, was from Seven Complaining Women, who stated that they had sexual relations with plaintiff and that he was threatening or intimidating them into keeping quiet about it. Plaintiff alleges that one of the women Sandi Van Lieu ("Lieu") revealed her identity to defendants in June 2017. Plaintiff states that Lieu sent an email which stated that the accusations were false. (Compl. ¶ 13.) Plaintiff alleges that defendants never contacted Lieu to inquire about her claims. Plaintiff states that he was not banned from the organization and instead he and defendants agreed that he would just stop attending SCBWI events. Plaintiff also denies ever harassing anyone.

In their motion, defendants contend that Olive's statement to the Associated Press was true. Defendants allege that they conducted an investigation and found that Plaintiff violated their code of conduct which stated: "[w]e do not tolerate harassment of conference participants in any form. Harassment includes...deliberate intimidation, stalking, following...and unwelcome sexual attention." (Anti-SLAPP, 22:7-10.) Defendants state that plaintiff Asher admits in the Complaint that an investigation was conducted. The section they refer to reads as follows: "Plaintiff is informed and believes and thereon alleges that no further investigation [aside from the conversation between Oliver and Plaintiff] into the April 2017 accusations against plaintiff was conducted." (Compl. ¶ 11). Defendants allege that they did corroborate the accusations against Plaintiff. Oliver states that she spoke to plaintiff and that he admitted to having extramarital affairs with group members. Defendants state that the accusations were further corroborated when they received an email from Robin Mellom ("Mellom") who revealed that she was one of

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 40

19STCV01907

April 26, 2019

**JAY ASHER vs SCBWI - SOCIETY OF CHILDRENS BOOK
WRITERS AND ILLUSTRATORS, A NON-PROFIT
CORPORATION [A CALIFORNIA CORPORATION], et al.**

8:30 AM

Judge: Honorable David Sotelo
Judicial Assistant: R. Reza
Courtroom Assistant: M. Navarro

CSR: W. Wilcox, #9187
ERM: None
Deputy Sheriff: None

the women who wrote the anonymous email. In December 2017, Mellom wrote that plaintiff was harassing her by calling her crazy and threatening to sue her.

Statement to the Associated Press: The Court finds that plaintiff cannot demonstrate that Oliver's statement to the Associated Press was false. There is no evidence to indicate that defendants did not conduct an investigation. It is undisputed that defendants received an email alleging that Plaintiff had intimidated or threatened SCBWI members to keep them from discussing their past sexual relations. Intimidation or threats would have been a violation of SCBWI's then existing code of conduct. Defendants attempted to corroborate this email by contacting plaintiff, who admitted to Oliver that he engaged in extramarital affairs with SCBWI members. Plaintiff's arguments, about the lack of follow-up inquiries with purported accusers, are about the sufficiency or the thoroughness of the investigation. However, Plaintiff has not demonstrated that there was no investigation at all.

Additionally, plaintiff has not demonstrated that he never harassed anyone. Moreover, he does not dispute the public interest surrounding sexual harassment in any its many permutations. Instead, he admits to consensual relationships and denies that he sexually harassed any person. And even if the Court accepted the results of the polygraph test—which it does not—that would only indicate that plaintiff believed none of his actions constituted harassment. Rennert's and Lieu's declarations are irrelevant (that they have never witnessed plaintiff harass anyone, does not prove that Plaintiff never harassed someone outside of their presence).

Statement to Publishers Weekly: The Court also finds that plaintiff cannot demonstrate that SCBWI's statement to Publishers Weekly was false. Essentially Defendants' statement said two things (1) that they were regretful for any incidents of harassment that had occurred and (2) that they were implementing a new harassment policy. Plaintiff interprets this statement as saying that the policy was changed because of the allegations against him. It is true that before quoting SCBWI's statement, the Publishers Weekly article states that "following news surrounding the removal of Jay Asher...from the Society of Children's Book Writers and Illustrators on charges of sexual harassment, the SCBWI has announced a revised anti-harassment policy." (Oppo.,10:1-3.) However, the earlier statement to the Associated Press stated that Plaintiff and another individual had violated SCBWI's code of conduct and as a result had been banned. Even if plaintiff could show that he had never harassed anyone, he has not demonstrated that SCBWI did not change its policy because of the other accused individual.

Actual Malice-Public Figure: Because plaintiff is undisputedly a public figure, they must show

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 40

19STCV01907

April 26, 2019

**JAY ASHER vs SCBWI - SOCIETY OF CHILDRENS BOOK
WRITERS AND ILLUSTRATORS, A NON-PROFIT
CORPORATION [A CALIFORNIA CORPORATION], et al.**

8:30 AM

Judge: Honorable David Sotelo
Judicial Assistant: R. Reza
Courtroom Assistant: M. Navarro

CSR: W. Wilcox, #9187
ERM: None
Deputy Sheriff: None

that defendants acted with actual malice. Actual malice is defined as acting "with knowledge that [the publication] was false or with reckless disregard of whether it was false or not." New York Times Co. v. Sullivan (1964) 376 U.S. 254, 280. Moreover, actual malice cannot be implied and must be proven by direct evidence. Time, Inc. v. Hill (1967) U.S. 374; Sanborn v. Chronicle Pub. Co. (1976) 18 Cal. 3d 406, 413.

Plaintiff alleges that defendants acted with actual malice because they knew the allegations were false. Plaintiff states that when they spoke to Oliver on April 19, 2017, she indicated to Asher that she did not believe the women and that the accusations were just "sour grapes." (Decl. Asher ¶ 11.) Plaintiff reiterates that defendants never reached out to Lieu who denied being harassed by Plaintiff. Plaintiff also alleges that if defendants had reached out to Lieu they would have found out that Mellom manipulated Lieu into writing a draft of the anonymous email because she was jealous of plaintiff's success. (Decl. Lieu ¶ 9.)

The Court finds that plaintiff has failed to show that defendants' statements were made with actual malice. Even if we assume that Oliver told plaintiff she initially did not believe the anonymous Seven Complaining Women email in April of 2017, that does not indicate that defendants knew that accusations were false a year later during February 2018. It is also undisputed that during that later time, more and more people, including additional anonymous online users, accused plaintiff of sexually related harassment. It is also undisputed that two of the authors of the email revealed their identity. While one of the seven women recanted, the rest did not. Consequently, although defendants could have had reservations about the allegations, plaintiff cannot demonstrate that defendants knew the allegations were false or were reckless as to their veracity.

Intentional Infliction of Emotional Distress: In order to state a cause of action for intentional infliction of emotional distress a plaintiff must show: (1) outrageous conduct by the defendant; (2) the defendant's intention of causing or reckless disregard of the probability of causing emotional distress; (3) the plaintiff's suffering severe or extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. *Trerice v. Blue Cross of California* (1989) 209 Cal. App. 3d 878, 883.

As discussed earlier, plaintiff cannot demonstrate that they will succeed in their defamation causes of action. The law recognizes that an independent cause of action cannot be maintained for intentional infliction of emotional distress based on the very same acts which are insufficient to support a cause of action for defamation. *Flynn v. Higham*, 149 Cal.App.3d 677, 682. In

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 40

19STCV01907

April 26, 2019

**JAY ASHER vs SCBWI - SOCIETY OF CHILDRENS BOOK
WRITERS AND ILLUSTRATORS, A NON-PROFIT
CORPORATION [A CALIFORNIA CORPORATION], et al.**

8:30 AM

Judge: Honorable David Sotelo
Judicial Assistant: R. Reza
Courtroom Assistant: M. Navarro

CSR: W. Wilcox, #9187
ERM: None
Deputy Sheriff: None

Flynn, the court stated that to allow such a claim "...would also render meaningless any defense of truth or privilege." Id. at 682. Since plaintiff cannot demonstrate that the statements were false or that defendants had serious doubts about their truth, he cannot meet the outrageous conduct prong of intentional infliction of emotional distress.

Plaintiff has not presented sufficient evidence to establish a probability of prevailing in any of his causes of action in trial.

In the end, this Court finds that plaintiffs filed this law suit against defendants after defendants exercised the Constitutional right to speech. As such, the gravamen of plaintiff's case and of plaintiff's causes of action, is the attempt to take away defendant's constitutionally protected rights or to punish the defendants for exercising those rights, and plaintiff has not met his burden in presenting sufficient evidence to establish a probability of prevailing at trial.

Conclusion: The Court GRANTS the anti-SLAPP motion, plaintiff's causes of action are stricken, and defendants are to give notice.

Certificate of Mailing is attached.

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Stanley Mosk Courthouse 111 North Hill Street, Los Angeles, CA 90012		FILED Superior Court of California County of Los Angeles 04/26/2019 Sherri R. Carter, Executive Officer / Clerk of Court By: <u>Rosalva R. Reza</u> Deputy
PLAINTIFF/PETITIONER: Jay Asher		
DEFENDANT/RESPONDENT: SCBWI - Society of Childrens Book Writers and Illustrators, a Non-Profit Corporation [a California Corporation] et al		
CERTIFICATE OF MAILING		CASE NUMBER: 19STCV01907

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Patrick Leroy Fisher
Fisher Law Office
1322 Morro Street
San Luis Obispo, CA 93401

JEFF WHITTINGTON
KAUFMAN BORGEESE & RYAN LLP
23975 PARK SORRENTO, SUITE 370
CALABASAS, CA 91302

Sherri R. Carter, Executive Officer / Clerk of Court

Dated: 04/30/2019

By: Rosalva R. Reza
Deputy Clerk

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES
CASE NAME: JAY ASHER v. SCBWI, OLIVER
CASE NO.: 19STCV01907

I declare as follows:

I am employed in the County of Los Angeles, California. I am over the age of 18 years, and not a party to the within action; my business address is Kaufman Borgeest & Ryan LLP, 23975 Park Sorrento, Suite 370, Calabasas, California 91302. I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

On May 9, 2019, I served a true and correct copy, of the following document(s) described as follows:

[PROPOSED] JUDGMENT RE: DEFENDANTS SOCIETY OF CHILDREN'S BOOK WRITERS AND ILLUSTRATORS AND LIN OLIVER'S SPECIAL MOTION TO STRIKE PURSUANT TO C.C.P. §425.16

☐ on the interested parties in the within action by placing the above documents in the United States mail for Express Mail delivery at 23975 Park Sorrento, Suite 370, Calabasas, California 91302 in a sealed envelope, with Express Mail postage thereon fully prepaid; by depositing copies of the above documents in a box or other facility regularly maintained by Federal Express, with delivery fees paid by the sender's account. (Code of Civil Procedure § 1013(c).) (*Overnight Delivery Service*)

☒ on the party or parties named below, by following ordinary business practice, placing a true copy thereof enclosed in a sealed envelope, for collection and mailing with a United States Postal Service, where it would be deposited for first class delivery, postage fully prepaid, in the United States Postal Service, that same day in the ordinary course of business, addressed as set forth below. (*Regular Office Deposit*)

PLEASE SEE ATTACHED SERVICE LIST.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on May 9, 2019, at Calabasas, California.


Allie Sayle

SERVICE LIST
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES
CASE NAME: JAY ASHER v. SCBWI, OLIVER
CASE NO.: 19STCV01907

Patrick L. Fisher, Esq. FISHER LAW OFFICE 1322 Morro Street San Luis Obispo, CA 93401	<i>Attorneys for Plaintiff</i>
Earl E. Conaway, III, Esq. EARL E. CONAWAY, III, APLC 1065 Higuera Street, Suite 202 San Luis Obispo, CA 93401	<i>Attorneys for Plaintiff</i>